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DEC 22 2009

**OFFICE OF PETITIONS**

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In re Application of :  
Ross : DECISION ON PETITION  
Application No. 10/003,719 : PURSUANT TO  
Filed: October 30, 2001 : 37 C.F.R. § 1.181(A)  
Attorney Docket Number: :  
29094/14:2 :  
Title: VERIFICATION ENGINE FOR :  
USER AUTHENTICATION :  
:

This is a decision on the petition filed November 4, 2009, pursuant to 37 C.F.R. § 1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

On March 6, 2009, a Pre-Appeal Brief Request for Review was filed along with a Notice of Appeal. On May 5, 2009, a Notice of Panel Decision from Pre-Appeal Brief Review (notice) was mailed, indicating that the application remained under appeal. The notice indicated that a response was due by June 5, 2009, and that extensions of time were available. No response was received, and no extension of time was requested. As such, this application went abandoned on June 6, 2009. A notice of abandonment was mailed on October 13, 2009.

With the present petition, Petitioner has requested that the holding of abandonment be withdrawn.

Petitioner has indicated that at the time of the mailing the notice of abandonment, Applicant was still in a position to purchase an extension of time<sup>1</sup> (the maximum extendable period for

<sup>1</sup> Petition, page 2.

response expired on November 5, 2009). Petitioner has further indicated "Applicant seeks to have the case pending for the purpose of filing a continuation or an RCE of the subject application by November 5, 2009."<sup>2</sup> Accordingly, a five-month extension of time was submitted concurrently with this petition, so as to extend the period for submitting a response to the notice of May 5, 2009 until November 5, 2009 (the day following the day on which this petition was filed).

The petition under 37 C.F.R. § 1.181(a) is **GRANTED** to the extent that the holding of abandonment is **WITHDRAWN**, as it has been established that the notice of abandonment was mailed prior to the expiration of the maximum extendable period for reply.

However, the electronic record has been reviewed, and a response to the notice of May 5, 2009 (such as an Appeal Brief or the aforementioned continuation or RCE) has not been located in the electronic file. As such, pursuant to 37 C.F.R. § 1.135(a),<sup>3</sup> **this application went abandoned by operation of law on November 6, 2009.**

Petitioner may wish to consider filing a petition pursuant to 37 C.F.R. §§ 1.137(a) and/or (b). Unless Petitioner believes that he can successfully assert that the entire period of delay was unavoidable, he may wish to file pursuant to the unintentional standard. **Any delay in promptly seeking relief under 37 C.F.R. § 1.137 may be considered evidence of intentional delay and an absolute bar to revival.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.<sup>4</sup>

/Paul Shanoski/  
Paul Shanoski  
Senior Attorney  
Office of Petitions

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<sup>2</sup> Id.

<sup>3</sup> "If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise."

<sup>4</sup> Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.